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JUN 23 2003

OFFICE OF PETITIONS

In re Application of
Edinger, et al.
Application No. 10/087,684
Filed: March 1, 2002
Atty. Dkt. No.: 21402-214 CIP
(Cura-514)
Title: PROTEINS AND NUCLEIC
ACIDS ENCODING SAME

DECISION REFUSING
STATUS UNDER 37 CFR
1.47(a)

This decision is in response to the petition under 37 CFR 1.47(a), filed March 10, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the non-reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed March 1, 2002 without a fully executed oath or declaration. Accordingly, on August 9, 2002, a Notice to File Missing Parts of Nonprovisional Application was filed requiring, *inter alia*, an executed oath or declaration and surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (1) set forth above. Petitioner has failed to establish that the non-signing inventor received the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a bona fide effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. Petitioner has presented no evidence that the non-

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signing inventor was ever presented with a copy of the application papers (specification, claims, drawings, oath or declaration) for the instant application.

Any renewed petition should be accompanied by evidence to sufficiently establish that the non-signing inventor was sent a complete copy of the application papers and thereafter refused to execute the declaration. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. Petitioner may wish to provide the Office copies of letters sent to the inventor indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventor receives the application papers and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 308-6916
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.

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